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THE SPEAKER AND HIS POWERS.

BY HANNIS TAYLOR, LL.D., FORMERLY UNITED STATES MINISTER
TO SPAIN.

WHEN in 1775 Benjamin Franklin made the first draft of our first Federal Constitution, embodied in the Articles of Confederation,* he vested the entire legislative power in the one-chamber assembly known as the Continental Congress. Down to that time, the bicameral, or two-chamber, plan had never been applied to the organization of a Federal assembly. The first to propose such an experiment was Pelatiah Webster, who, in his epoch-making paper of February 16th, 1783, said:

“That the Congress shall consist of two chambers, an upper and a lower or senate and commons, with the concurrence of both necessary to every act; and that every State send one or more delegates to each house: this will subject every act to two discussions before two distinct chambers of men equally qualified for the debate, equally masters of the subject and of equal authority in the decision. These two Houses will be governed by the same natural motives and interests—viz., the good of the Commonwealth and the approbation of the people.”

In thus departing from the ancient type of a one-chamber Federal assembly, as old as the Greek leagues, the great architect of our existing Constitution had, of course, before his eyes the bicameral, or two-chamber, Parliament of England, which he proposed to reproduce, for the first time, in a Federal State. When the time came for the Constitutional Convention of 1787 to utilize the unique invention of 1783, its debates make it clear that the Speaker of the House of Representatives was expected only to exercise

* “It appears that as early as the 21st of July, 1775, a plan entitled ‘Articles of Confederation and *Perpetual* Union of the Colonies’ had been sketched by Dr. Franklin, the plan being on that day submitted by him to Congress; and though not copied into their Journals, remaining on their files in his handwriting.”—“The Madison Papers,” Vol. II., p. 688, Gilpin Ed. 1841.

the powers vested at that time in the Speaker of the House of Commons. So limited were the powers of the former at the outset that the House Committees of the First Congress were elected by the House itself. During the Second Congress, they were sometimes elected and sometimes appointed. Not until the Fourth Congress did the exclusive power of appointment pass into the Speaker's hands. From that time onward, the growth of his powers represents an evolution whose advance synchronizes with the growth of the business of the House. The growth of legislative business in Congress appears upon the face of the following table, which sets forth by decades the total number of bills introduced into the two Houses from the first Congress up to and including the first session of the Sixtieth:

BILLS INTRODUCED.			
<i>Congress.</i>	<i>House.</i>	<i>Senate.</i>	<i>Total.</i>
<i>First</i>	143	46	189
<i>Tenth</i>	173	54	227
<i>Twentieth</i>	462	99	561
<i>Thirtieth</i>	814	485	1,299
<i>Fortieth</i>	1,460	648	2,108
<i>Fiftieth</i>	12,664	4,000	16,664
<i>Fifty-ninth</i>	25,897	8,627	34,524
<i>Sixtieth</i> (First Session)	22,272	7,273	29,545

Upon this basis, it is safe to predict that the total number of bills introduced, and to be introduced, into the Sixtieth Congress will exceed 40,000.*

The enormous increase in the volume of legislation during the last half-century is not confined to our own country,—it is one of the salient features of the age in which we live. In attempting to account for it, in an address recently delivered before the New York Bar Association, Mr. Bryce said:

“Various causes may be assigned for it. It may be due to the swift changes in economic and social conditions which have called forth new laws to deal with those facts. Pessimists may perhaps ascribe it to the spread of new evils or the increase of old evils which the State is always attempting by one expedient after another to repress. I suppose this is what Tacitus meant when he wrote *Corruptissima republica plurimae leges*. Or the optimist may tell us that it is an evidence of that reforming zeal which is resolved to use the power of the State and the law for extirpating ancient faults and trying to make every one happier. Which of these or of other possible explanations is the true one, I will not stop

* This table does not include joint resolutions.

to consider. But the fact that the output of legislation has of late been incomparably greater than in any previous age—greater not only absolutely, but in proportion to the population of the civilized nations—suggests a consideration of the forms and methods of lawmaking as a topic well suited to be dealt with by a great professional body such as I have the honor of addressing.”

As the legislative business of this country has grown in extent and complexity, the pressure upon the primitive machinery of the House of Representatives has increased until at last a crisis has been reached. If so homely a simile is permissible, the growing business of the House may be likened to the growing business in a narrow stream flowing through a timber region in which the timber-cutters increase every year. In such a region, no matter how great the glut, the channel must be kept open, so that a certain number of pieces may be forced down the stream every year. As the House itself has never attempted so to reorganize its machinery in a scientific way as to meet new conditions, the one crude and empirical expedient so far resorted to to keep the channel open has consisted of the arming of the Speaker, from time to time, with Titanic powers. As the glut of legislative timber in the channel has increased, Mr. Speaker has been endowed with first one abnormal power and then another, in order that national legislation may not cease altogether. Recognition for the passage of bills by unanimous consent arose when the pressure of business became so great that they could not be reached on the calendar in the regular order of business. Then, as an expedient to alleviate the ever-growing difficulty, were adopted the Reed rules in the Fifty-first Congress, from which time the steadily increasing powers of the Speaker may be definitely dated. The fact that the Reed rules were substantially re-adopted under Speaker Crisp should be conclusive proof that they were the outcome of conditions that present equal difficulties to the leaders of both parties.

It is idle to attempt to give a partisan tinge to the grave problem with which the country is now confronted. The difficulty in question is an inevitable and unforeseen outcome of our national development. Both parties are equally responsible for the hopeless and unscientific attempt to carry on the vast and complicated affairs of a legislative department store by the primitive methods once adequate to the needs of a small establishment. As the evil has finally become unbearable, it has passed into the arena of

practical politics. The Democratic platform recently adopted at Denver declares that:

"The House of Representatives was designed by the fathers of the Constitution to be the popular branch of our Government, responsive to the public will.

"The House of Representatives, as controlled in recent years by the Republican party, has ceased to be a deliberative and legislative body, responsive to the will of a majority of its members, but has come under the absolute domination of the Speaker, who has entire control of its deliberations and powers of legislation.

"We have observed with amazement the popular branch of our Federal Government helpless to obtain either the consideration or enactment of measures desired by a majority of its members.

"Legislative government becomes a failure when one member, in the person of the Speaker, is more powerful than the entire body.

"We demand that the House of Representatives shall again become a deliberative body, controlled by a majority of the people's representatives, and not by the Speaker, and we pledge ourselves to adopt such rules and regulations to govern the House of Representatives as will enable a majority of its members to direct its deliberations and control legislation."

After we subtract from the foregoing the mistaken assumption that the present condition of things in the House of Representatives is entirely the result of the omissions or commissions of a single political party, every word of what remains is true in every particular. The House has departed from the design of the fathers; it has ceased to be responsive to the popular will; it is no longer the principal workshop of the Constitution; it is no longer even the principal talking-shop in which great public questions are threshed out in the first instance. As all the world knows, the departed sceptre has passed to the Senate, whose influence has thus become abnormal. As the House has ceased more and more to be a deliberative body, the Senate has become the real forum of debate to which the nation looks for light and guidance. It is now becoming the habit to say, when an important bill is pending in the House, "No matter, the Senate will fix it!" Thus that body has been forced to assume the initiative in certain kinds of legislation of a taxative and fiscal character that was never intended. If proof be needed on that point, reference may be made to the Wilson bill, which was so amended in the Senate as to become a new creation. Or more may be said as to the Bland-Allison bill, which, as introduced by the former, passed

the House by a majority of more than two-thirds. When it reached the Upper House, the Allison amendment, which passed the Senate by a safe majority, so disembowelled it that Mr. Bland upon its return made a hard fight against it. But, as the House concurred in the Allison amendment, he was forced at last to eat his opponent's leek by voting for the bill as amended. Through this power of amendment, the Senate has been able to assume an initiative in legislation which the congested condition of the House has forced it to relinquish. The normal and constitutional relations of the two Houses have thus been disturbed, and the result is a condition almost revolutionary. The House has suffered in prestige and influence; and the country is suffering because its business is not carried on in the normal way in what was intended to be the principal legislative and taxative workshop of the Constitution.

At the date of the French Revolution the only parliamentary government in the world was the English Parliament. Since that time,—and after the English political model had been popularized by reproduction in the United States,—it has been deliberately copied, more or less exactly, by every country which now has a parliamentary system. In that way, England became “the Mother of Parliaments,” the teacher of the science of representative government to all the world. The mainspring of the English Parliament is the Cabinet, which possesses the right to appear in the House of Commons and initiate legislation. When a great question is to be dealt with, the Cabinet presents it in the form of a bill to the popular chamber, and then demands, at such a time as it desires, that the matter shall be first debated and then disposed of by a final vote. Under such a system small matters are forced to wait until the great affairs of the Empire are disposed of. The issues thus presented are as clear and definite as they can possibly be made, and the responsibility for success or failure is put just where it belongs. The Speaker of the House of Commons is just as helpless in the presence of such a machine as a cow which attempts to stop a mogul engine in full career. Neither the English Parliament nor any of its reproductions in which the Cabinet system reappears can possibly suffer from the difficulty which has nearly extinguished our popular chamber as a deliberative body. Why should we suffer from the absence of a practical expedient which has reappeared, in some form, in all of the repro-

ductions of the English parliamentary system, except our own? Is it possible for us to extricate our popular chamber from the morass by vesting in our Cabinet the right to appear in it, and initiate legislation upon the great questions in which the whole nation is vitally concerned? Those who have given little or no thought to the subject will instantly say "No," and assign as a fatal objection the fact that, when the English Cabinet has been defeated upon a bill or resolution, it must resign and thus bring on a new election. They will then, with perfect truth, add that in a Federal commonwealth with such a vast territorial area, and with an Executive elected for a definite term, resignations and new elections after every adverse vote are entirely out of the question. Fortunately, a conclusive rejoinder is furnished to that objection by the Federal Constitution of Switzerland, under which the Cabinet possesses the right to appear in the chambers and initiate legislation, without the necessity of resignation after an adverse vote on the measures they have introduced.

Under the Swiss system, the executive power is vested, not in a President, but in a Council or Cabinet of seven, which holds office for three years. The Council apportions the departments of state among its own members, and "the members of the Council have the right to speak and make proposals in either House of the Federal legislature, but not to vote." In his famous essay upon presidential government, from which that quotation is taken, Mr. Freeman says: "The Swiss Federal Constitution has several points of likeness with that of America, and the Constitution of the two Houses of the Federal legislature is clearly borrowed from the American model." After an adverse vote has occurred, the Swiss ministers simply return to their offices and go on with their work until the end of their terms. In the light of that precedent, it is too clear for argument that we may adopt so much of the English Cabinet system as we need, and at the same time reject, as Switzerland does, that part of it which is not applicable to a Federal State like our own.

If the expedient proposed be a desirable one, it certainly can be applied without a constitutional amendment. It can easily be brought about by an act of Congress that can be written upon a sheet of note-paper, and by modifications in the rules of the House and Senate that should not fill more than two sheets of legal cap. As each House has the constitutional right to hear the hum-

blest citizen at its bar and to receive from him, for consideration and action, any petition or proposal he may desire to submit, it certainly can extend the same right to the members of the Cabinet by giving them, at stated times, the right to submit schemes of legislation with the right to debate them, *but without the right to vote*. In that way the members of our executive Government would be able to do, up to a certain point, all that the English ministers can do without becoming in any sense members of the House. By a brief act the members of our Cabinet could be given the right to appear, at stated times, in each chamber and to submit or initiate legislation on the great questions in which the nation is vitally concerned. By a modification of the rules, each House can concede the right of way (the order of the day), so that debate may be had on Cabinet measures at such times as it may designate. Under the new rules, the right of initiation should be limited to the House of Representatives,—there in the popular forum the first battle should be fought out. As Providence works in a mysterious way, the new office-buildings of the two Houses have been completed just in time to help on the inevitable reform. Before the end of the last session, the Hon. Samuel W. McCall, of Massachusetts, secured the passage of a resolution containing a tentative plan that contemplates the removal of the desks from the hall of the House, which should be dedicated exclusively to debate and deliberation, after it has been so reduced in size as to be within the compass of the human voice. How delightful to contemplate the splendid spectacle that such a scene would present! The leaders of the administration would be present in the persons of their best orators ready to defend their bills, while the picked men of the Opposition would be ready to take part in a debate that would be listened to, not only by our own country, but by the world. Suppose, for instance, that President Roosevelt had had the benefit of such machinery when, during the last session, the Anti-Trust Bill and the Publicity Bill, of which he was in favor, were presented to the House. A battle royal would have followed at once, and a final vote would have been had at once. Only by such a readjustment of our parliamentary machinery can the House of Representatives ever be given the place intended for it by the framers of the Constitution. Under the plan proposed, if a bill offered by the Cabinet is defeated in the House, there it should die. If it

passes the House, then the Cabinet should be heard in its support in the Senate under an order of the day to be there made for that purpose. In that way, and only in that way, can our parliamentary system, now so sadly out of joint, be made to work as harmoniously as the leading European reproductions of the English original. No possible constitutional difficulty stands in the way; any country lawyer should be skilful enough to draft the necessary legislation. It is simply a question of readjusting certain parts of the great Corliss engine, without making any organic changes whatever. In that kind of work the English statesmen are far ahead of us. In his brilliant monograph upon "The English Constitution," Walter Bagehot has said:

"There are, indeed, practical men who reject the dignified parts of Government. They say, we want only to attain results, to do business: a constitution is a collection of political means for political ends, and if you admit that any part of a constitution does no business, or that a simpler machine would do equally well what it does, you admit that this part of the constitution, however dignified or awful it may be, is nevertheless in truth useless."

The primary purpose of every constitution is to do business, and whenever any part fails to do its work the skilful machinist should be ready to put it back into commission. In making the readjustment, the main body of the machine should be disturbed as little as possible. In engrafting the Cabinet system, in a modified form upon our existing parliamentary procedure, the old committee system should be left in control of all ordinary legislation. All of that kind of legislation should pass through the old channels as it does at present,—only the extraordinary should pass under the control of the new addition. In that way, the abnormal powers of the Speaker and of his creation, the Committee on Rules, would fade into the background, while the new steering committee, the Cabinet, would come to the front as the driving power, whenever driving power is needed.

When Sir James Mackintosh said that "constitutions are not made, they grow," he announced a truth as applicable to our own as to the English. Nothing is more remarkable about our Federal system than its wonderful elasticity, its power of adaptation to new and unforeseen conditions through the action of judicial interpretation and legislation. Only its elasticity has saved it from destruction during the very rapid process in which it has been so expanded as to embrace an empire. The empirics

who are ever crying out for constitutional amendments, whenever a readjustment only is necessary, are those who do not understand the natural resources of the system. Fortunate it is for us that such amendments are practically impossible. In the present instance, no such need is involved. The evil in question is manifest to every one, and the remedy is at hand. A little practical business skill is all that is necessary to work out the result through a brief act of Congress and a modification of the rules. In its last analysis the whole matter may be thus stated: Every parliamentary system now existing in the world except our own, which has been copied from the English, has reproduced in some form the mainspring, the driving force, of the original, upon which its harmony chiefly depends. That mainspring or driving force is embodied in the right of the Cabinet to appear in the popular chamber, for the purpose of initiating legislation upon the great questions in which the nation is vitally concerned, and then of driving such legislation to a final vote. The lack of that practical business expedient, which everybody except ourselves enjoys, and which the vast and rapidly swelling volume of our legislative business urgently demands, has produced the abnormal, almost revolutionary, condition under which we now groan. The whole difficulty may be removed, without a constitutional amendment, by a brief act of Congress and a modification of existing rules. Why, then, should we permit our hands to be tied by a timid conservatism which English statesmen, who are ever adapting practical means to practical ends, would laugh to scorn. Instead of trifling longer with superficial and impotent expedients, we should make at once a complete and final readjustment of our sadly disordered parliamentary machinery, according to scientific principles which have stood the test of a wide experience. As the question is strictly a non-partisan one, the subject should be taken up at once by the victor in the pending political contest, whoever he may be. If a joint committee of the two Houses could only be constituted for the study of the subject, the outcome would surely be a report that would convince every one.

HANNIS TAYLOR.